IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 289 OF 2005

Suresh G. Parab,
14/4/ Near Govt.
Quarters, St. Inez,
Panjim, Goa. ... Petitioner

Versus

1. The State of Goa, through
its Chief Secretary,
Secretariat, Government
of Goa, Porvorim, and

2. Chief Electrical Engineer,
Electricity Department,
Government of Goa,
through its Chief Electrical
Engineer, Vidyut-Bhavan
3rd Floor, Panaji, Goa. ...Respondents.

Mr. V. A. Lawande, advocate for the petitioner.

Mr. S. S. Kantak, Advocate General with Ms. R. Chodankar, Additional Government Advocate for respondent nos. 1 to 3.

CORAM : R. M. LODHA &
N. A. BRITTO, JJ.

DATE : 30th August, 2005.

P.C.

Heard Mr. V. A. Lawande, the learned counsel for the petitioner. At the outset the learned counsel for the petitioner handed in two documents collectively, marked "X" for identification

purposes. We took the said documents on record and considered the same.

2. The petitioner in this Writ Petition prays for issuance of appropriate writ or direction for quashing the memorandum of chargesheet dated 26th July, 2004. According to the petitioner, he is being prosecuted on the selfsame allegations in the criminal case in the Court of Sessions at Panaji. Relying upon the judgment of the Supreme Court in the case of ***Capt. M. Paul Anthony vs. Bharat Gold Mines Ltd. & Anr., (1999) 3 SCC 679,*** the learned counsel for the petitioner submits that in the criminal case which is of grave nature, complicated questions of fact and law are involved and, therefore, the disciplinary proceedings until the conclusion of the criminal case deserve to be stayed if not quashed.

3. The petitioner has been served with a Memorandum dated 26th April, 2004 for an enquiry under Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965. The Articles of Charge framed against the petitioner read thus:-

> " ANNEXURE - I
> STATEMENT OF ARTICLES OF CHARGE FRAMED AGAINST SHRI SURESH G. PARAB, L.D. CLERK/CASHIER
>
> ARTICLE - I

Shri Suresh G. Parab while functioning as L.D. Clerk cum Cashier in the office of the Assistant Engineer, Elect., Sub-Divn. II (U), Panaji-Goa, under the control of the Executive Engineer, Elect. O & M Div. I, Panaji-Goa for the period from 1988 to 1995 failed to follow the correct procedures of Accounting and maintained the registers such as Challan Register, Cash Book, daily cash collection details/scrolls and Register, etc. in haphazardly manner and mismanaged the Government money with dishonest motive thereby committing grave irregularities in maintaining office records.

By the aforesaid acts the said Shri Suresh G. Parab, L.D. Clerk/Cashier has failed to maintain absolute integrity, devotion to duty and acted in a manner unbecoming of a Government Servant, thereby violating Rule 3(1) (i), (ii) and (iii) of the Central Civil Services (Conduct) Rules, 1964.

ARTICLE - II

That during the aforesaid period and while functioning in the aforesaid office, the said Shri Suresh G. Parab, L.D. Clerk/Cashier manipulated the entries in the cash book by reversing the entries of the bounced cheques on the receipt side as well as the payment side due to which the correct position of the

bounced cheques/challan could not be asserted causing mismanagement and irregularities.

By the aforesaid acts the said Shri Suresh G. Parab has failed to maintain absolute integrity, devotion to duty and acted in a manner unbecoming of a Government Servant, thereby violating Rule 3 (1) (i), (ii) and (iii) of the Central Civil Services (Conduct) Rules, 1964.

ARTICLE -III

That during the aforesaid period and while functioning in the aforesaid office, the said Shri Suresh G. Parab, L.D. Clerk/Cashier negligently, fraudulently and intentionally failed to take action of sending the unrealised cheques to the consumers and inform the billing section for reverting the paid entries causing loss to the Government and undue benefit to the consumers.

ANNEXURE - II

STATEMENT OF IMPUTATIONS OF MISCONDUCT OR MISBEHAVIOUR IN SUPPORT OF THE ARTICLE OF CHARGE FRAMED AGAINST SHRI SURESH G. PARAB, L.D. CLERK/CASHIER.

ARTICLE - I

Shri Suresh G. Parab while functioning as L.D. Clerk/Cashier in the office of the Assistant Engineer,

Electricity Department Sub-Div. II(U), Panaji - Goa under the control of the Executive Engineer, Electricity Department O&M Division I, Panaji - Goa, during the period 1988 to 1995 was handling cash transactions in respect of Electricity consumption charges and security deposit charges pertaining to Sub-Divn. II(U), Panaji.

During one of the Audit inspection, it was noticed that, Shri Suresh G. Parab, L.D. Clerk/Cashier failed to maintain various registers, like challan register, cheque register, daily cash collection scrolls/register, cash book, etc. as per the financial rules. In some cases, they were maintained in a haphazard manner with the dishonest motive to mismanage and defraud Government money. Shri Suresh G. Parab, L.D. Clerk/Cashier did not maintain the cheque register i.e. Register of valuable in Form GAR-4 and register of bills, due to which it was not possible to trace the exact position of the amount of mismanaged or misappropriated. However, an amount of Rs.1,45,989/- is presumed to be misappropriated during the period from 1.1.1995 to 26.10.1995 on account of bounce cheques for which no records are maintained. Besides, the shortage due to lack of proper challan records are calculated as Rs.5,73,234/- for which Shri Suresh G. Parab is primarily responsible totaling to Rs.7,19,223/- .

ARTICLE - II

That during the aforesaid period and while functioning as such in the aforesaid office said Shri Suresh G. Parab

failed to follow prescribed procedures of Accounting prescribed under the financial rules. During the Audit, it was found that the entries made in the cash book pertaining to bounced cheques/challans were reversed on the receipt side as well as the payment side and hence the correct position of bounced cheque/challans was not known and available causing lot of hardship and inconvenience thereby committing breach of trust with the idea of misappropriating the Government money.

ARTICLE - III

Shri Suresh G. Parab, while functioning as L.D. Clerk/Cashier in the office of the Assistant Engineer, Elect., Sub-Divn.II(U), Panaji under the control of the Executive Engineer, Elect., O&M Div. I, Panaji - Goa committed grave irregularities as much as he negligently, fraudulently and intentionally failed to follow the procedures of sending the unrealised cheques to the Consumers and to intimate the billing section of the same for recording appropriate entries in the ledger of the said Consumers. While, the consumers were paying in cash as well as in cheques towards the electric consumption charges and security deposit charges, on many occasions the payment made in cheques were found bounced due to no/less balance in the bank to clear the cheques presented by the Consumers and therefore, no money was realised causing loss to the Government and undue benefit to the Consumers.

As per the procedure and rules, the unrealised cheques

were to be sent to the concerned consumers for making up to date payment in cash and copy was to be sent to the billing section for recording minus entries in the ledger thereby leaving a difference of Rs.7,19,223/- being Rs.1,45,989/- on account of bounced cheques and Rs.5,73,234/- on account of non availability of duly accounted challan remittance. Shri Suresh G. Parab, while functioning as L.D. Clerk/Cashier in the above office committed gross irregularities and negligence of duty and found to be dishonest with serious dereliction of duty.

ARTICLE - IV

Shri Suresh G. Parab, while functioning as L.D. Clerk/Cashier in the office of the Assistant Engineer, Elect., Sub-Div.II(U), Panaji under the control of the Executive Engineer, Elect., O&M Div. I, Panaji - Goa deliberately accepted cash from one Shri Dalal bearing Electrical Installation No. PJM-8B-107 amounting to Rs.8902/- towards energy consumption charges issuing him valid official receipt. The amount so received towards energy bills Nos. 144711, 136081, 553545, 75610 733240, 686790 and 200981 was paid by Shri Dalal to Shri Suresh G. Parab, L.D. Clerk/Cashier, who used the said amount for his personal use instead of depositing it in the Government treasury. Besides, this amount was shown as arrears in the name of the consumer, Shri Dalal thereby misappropriating said amount.

ARTICLE - V

Shri Suresh G. Parab, while functioning as L.D. Clerk/Cashier in the aforesaid office during the aforesaid period signed the challans without any authority and instructions issued in writing from the Assistant Engineer. In fact, the Assistant Engineer was the office in charge of the Division and authorised person to sign the challan. The authority of signing the challans was usurped by Shri Suresh G. parab illegally and unauthorisedly. Moreover, Shri Suresh G. Parab signed on the challans as Assistant Engineer above the designation rubber stamps of the Assistant Engineer without any indication that the challans was signed for and on behalf of the Assistant Engineer giving a clear and false indication that the challans were signed by the Assistant Engineer of the Sub-Division. The act on the part of Shri Suresh G. Parab, L.D. Clerk/Cashier was fraudulent and arbitrary inviting disciplinary action as per the rules.

ARTICLE -VI

Shri Suresh G. Parab, while functioning as L.D. Clerk/Cashier in the office of the Assistant Engineer, Elect., Sub-Divn.II(U), Panaji under the control of the Executive Engineer, Elect., O&M Div.I, Panaji - Goa while collecting receipts from the bills issued to the consumers, rectified the amounts in many cases changing the total amount on the bills unauthorisedly. Further, the amount were collected short as compared to bills/counterfoils attached to the scrolls. It happened that the amounts were corrected in one or two places leaving aside the third

counterfoil. Thus committing misappropriation of Rs.40,24,393/- as per the details as under :-

Year	Statement 'A'	Statement 'B'	Total
1989	34.601	1.17.772	1.52.373
1990	1.20.681	37.227	1.57.908
1991	1.85.991	1.17.913	3.03.904
1992	2.27.108	3.12.014	5.39.122
1993	3.66.341	6.51.551	10.17.892
1994	3.53.470	7.80.501	11.33.971
1995 up to 26.10.95	1.45.989	5.73.234	7.19.223
Total	14.34.181	25.90.212	40.24.393

By the aforesaid acts, the said Shri Suresh G. Parab, L.D. Clerk/Cashier has failed to maintain absolute integrity, devotion to duty and acted in a manner unbecoming of a Government servant, thereby violating Rule 3(1) (i), (ii) and (iii) of the Central Civil Services (Conduct) Rules, 1964".

4. It is true that the petitioner is also being prosecuted for the offences punishable under Sections 409, 468, 471 and 473 of the Indian Penal Code and Section 13(1)(c) read with Section 13(2)

of the Prevention of Corruption Act, 1988, and the said criminal case is pending before the Sessions Judge at Panaji.

5. Having considered the entire material available on record, we find no justifiable ground for quashing the disciplinary proceedings or to stay the disciplinary proceedings until the conclusion of the criminal trial. In our view, no prejudice will be caused to the petitioner if the pending criminal case and disciplinary proceedings are proceeded with. In ***Capt. M. Paul Anthony vs. Bharat Gold Mines Ltd. & Anr.*** (supra), the Apex Court ruled that departmental proceedings and proceedings in criminal case can proceed simultaneously, though separately. The Apex Court did observe that if departmental proceedings in the criminal case are placed on identical and similar set of fact and the charge in the criminal case against the delinquent employee is of a grave nature that involves complicated questions of law and fact, it would be desirable to stay the departmental proceedings until the conclusion of the criminal case. Whether the nature of the charge in a criminal case is grave and whether complicated questions of fact and law are involved, would depend upon the nature of the offence, the nature of the case launched against the employee on

the basis of the evidence and material collected against him during investigation or as reflected in the charge and due regard must be given to the fact that the departmental proceedings cannot be unduly delayed. In the light of the legal position laid down by the Supreme Court in ***Capt.M. Paul Anthony*** (supra) and the facts and circumstances prevalent in the present case, we are not persuaded to stay or quash the disciplinary proceedings. In our considered view, the disciplinary proceedings must be taken to the logical conclusion and the criminal trial will take its own course.

6. The Writ Petition does not deserve to be admitted and is dismissed in limine.

R. M. LODHA, J.

N. A. BRITTO, J.

mc.